

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Enforcement Case No. 09-7166

Jalbert Financial Group, LLC,

Russell K. Jalbert and

Eugene Wittstock.

Respondents.

_____ /

Issued and entered
this 6th day of August 2009
by Stephen R. Hilker
Chief Deputy Commissioner

ORDER TO CEASE AND DESIST

The Commissioner of the Office of Financial and Insurance Regulation ("OFIR"), pursuant to his statutory authority and responsibility to administer and enforce the Michigan Uniform Securities Act ("MUSA"), 1964 PA 265, MCL 451.501 *et seq.*, hereby orders **JALBERT FINANCIAL GROUP, LLC, RUSSELL K. JALBERT and EUGENE WITTSTOCK** to immediately **CEASE AND DESIST** from engaging in the business of effecting or attempting to effect purchases or sales of securities. Respondents are also notified of an opportunity to request a hearing on this matter.

I.

BACKGROUND AND FINDINGS OF FACT

1. Respondent Jalbert Financial Group, LLC, (herein "Jalbert Financial") is a Michigan limited liability company whose principle place of business is located at 40 Oak Hollow, Ste. 340, Southfield, MI 48033. Jalbert Financial is a Michigan licensed insurance resident producer agency with qualifications to transact business in accident, health, life, and variable annuities. System ID No. 0084964.

2. Respondent Russell K. Jalbert (herein “Jalbert”) is a Michigan resident who is also a licensed resident producer agent with qualifications to transact business in accident, health, life, variable annuities, and variable contracts. System ID No. 0025419. He is the president of Jalbert Financial. During the relevant time periods, Jalbert held an agency appointment with Jalbert Financial.
3. Respondent Eugene J. Wittstock (herein “Wittstock”) is a Michigan resident who is also a licensed resident producer agent with qualifications to transact business in accident, health, life, and variable annuities. System ID No. 0161313. During the relevant time periods, Wittstock held an agency appointment with Jalbert Financial.
4. Jalbert Financial, Jalbert and Wittstock are hereinafter referred to as the Respondents.
5. In November 2008, OFIR issued a Cease and Desist Order against Diversified Lending Group, Inc. (“DLG”) to cease and desist from selling unregistered, nonexempt securities in the State of Michigan in violation of the MUSA.
6. In June 2009, OFIR opened an investigation of the Respondents’ business activities. In response to inquiry from OFIR, DLG furnished information showing that from 2007 - 2008 the Respondents were agents of DLG for the purpose of effecting the purchase and sale of DLG securities.
7. According to DLG’s response to OFIR’s inquiry, DLG was engaged in the acquisition and operation of income producing real estate, real estate lending, insurance premium financing strategies, financial service brokerage business and private investment pools. DLG acknowledged that it conducted certain business through its wholly-owned subsidiary, Applied Equities, Inc. (“AEI”). AEI contracted with Your Platinum Distributors Insurance Marketing Co., (“YPD”), a Texas corporation and wholesaler of annuity, life insurance, and investment products. YPD, in turn, contracted with insurance agents, whom DLG authorized to represent DLG to the insurance agent’s existing clients. The insurance agents, such as Jalbert Financial, Jalbert and Wittstock, then solicited investments ranging from \$50,000 to \$250,000. According to DLG, the DLG products were designed to be shown only to the insurance agent’s existing clients, whom the agent knew to be accredited investors and appropriate candidates. OFIR also obtained documentation of the Respondents’ sales and commissions paid to them in response to a subpoena.
8. According to Respondents Jalbert and Wittstock, Jalbert Financial received at least \$28,000 in commissions paid from YPD. These commissions were paid from the sale of DLG securities.
9. According to Respondent Jalbert, he admitted to OFIR that he sold DLG securities and he received at least \$40,000 in commissions from YPD. These commissions were paid from the sale of DLG securities.

10. According to Respondent Wittstock, he admitted to OFIR that he sold DLG securities and he received at least \$60,000 in commissions from YPD. These commissions were paid from the sale of DLG securities.
11. The Respondents were not registered as securities agents pursuant to the MUSA. Respondents Jalbert and Wittstock admitted that they did not possess a securities agent registration to sell DLG securities in Michigan.
12. OFIR staff conducted a search to locate records of any agent registration or exemption filings pursuant to the MUSA in the matter of Jalbert Financial, Jalbert and Wittstock. No such records were found.

II.

CONCLUSIONS OF LAW

WHEREAS, Section 201(a), of the MUSA, MCL 451.601(a), provides that a person may not transact business in this state as an agent unless registered under this act, or exempt.

WHEREAS, Section 401(c), MCL 451.801(c), defines an agent to mean any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases **or** sales of securities.

WHEREAS, Section 402(c) of the Act, MCL 451.802(c), provides that in any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it; and,

WHEREAS, Respondents failed to offer sufficient proof pursuant to Section 402(c) that Respondents were exempted from registration.

WHEREAS, Section 408 of the Act, MCL 451.808, states that whenever it appears to the Administrator (Commissioner of the Office of Financial and Insurance Regulation) that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule or order hereunder, it may in its discretion issue a cease and

desist order or bring an action in a circuit court to enjoin the acts or practices and to enforce compliance with this Act or any rule or order hereunder; and

WHEREAS, Respondents offered and sold securities to Michigan residents, and

WHEREAS, the Respondents were compensated in the form of commissions for their selling efforts,

WHEREAS, the Respondents acted as unregistered agents in violation of the MUSA, MCL 451.601, 201(a).

WHEREAS, the Administrator finds this Order necessary and appropriate in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act; and

WHEREAS, the Administrator retains the right to pursue further administrative action against Respondents should the Administrator determine that such action is necessary and appropriate in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act; and

WHEREAS, based on the foregoing, OFIR Staff recommends that the Administrator find that Respondents have engaged in acts and practices that violate Section 201 of the Act, MCL 451.601.

III.

ORDER

IT IS THEREFORE ORDERED, pursuant to Section 408 of the Act, MCL 451.808, and Section 409 of the Act, MCL 451.809, that:

1. Respondents shall immediately **CEASE AND DESIST** from violating Section 201 of the Act, MCL 451.601.

2. Based upon Respondents' violations of the Act and because the Administrator finds that it would be in the public interest, any exemptions under Section 402(a)(1), (6), (7), (8), (9), (10), and 402(b) of the Act, MCL 451.802(a)(1), (6), (7), (8), (9), (10), and 451.802(b) for which Respondents might qualify, are hereby summarily denied or revoked for all purposes provided under Section 408(c) of the Act, MCL 451.808(c) including but not limited to Respondents' right to engage in transactions otherwise exempt under Section 402(b) of the Act, MCL 451.802(b) in the future absent compliance with the registration provisions of the Act.
3. Respondent Jalbert Financial Group, LLC, shall pay a civil fine of \$2,000. Upon issuance and entry of this Cease and Desist Order, OFIR will send an Invoice to Respondent and Respondent shall pay the fine by the due date printed on the Invoice.
4. Respondent Russell Jalbert, shall pay a civil fine of \$3,000. Upon issuance and entry of this Cease and Desist Order, OFIR will send an Invoice to Respondent and Respondent shall pay the fine by the due date printed on the Invoice.
5. Respondent Eugene Wittstock, shall pay a civil fine of \$10,000. Upon issuance and entry of this Cease and Desist Order, OFIR will send an Invoice to Respondent and Respondent shall pay the fine by the due date printed on the Invoice.

IT IS FURTHER ORDERED that Respondents' failure to comply with the terms of this ORDER may subject them to sanctions, fines, and/or penalties, including but not limited to the following:

- (a) The imposition of additional civil penalties of not more than \$1,000 for each violation of this Act, not to exceed a total of \$10,000; and/or
- (b) Pursuant to Section 409 of the Act, MCL 451.809, any willful violation of certain provisions of the Act shall, upon conviction, result in a fine of not more than \$25,000 for each violation, or imprisonment for not more than 10 years, or both.

IV.

NOTICE OF OPPORTUNITY FOR HEARING

Section 408(b) of the MUSA, MCL 451.808, provides:

A person who has been ordered to cease and desist may file with the administrator within **15 days** after service on him or her of the order a written request for a hearing. The administrator within 15 days after the filing shall issue a notice of hearing and set a date for the hearing. If a hearing is not requested by the person or is not ordered by the administrator within 15 days, the order will stand as entered. The administrator shall hold the hearing in accordance with the

administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, and shall have all the powers granted thereunder. The administrator shall issue a decision sustaining, modifying, or dismissing the original order.

Should Respondents wish to request a hearing relating to the Chief Deputy Commissioner's Order to Cease and Desist, a hearing must be requested in writing within 15 days of the issuance of this Order. The request for a hearing must be addressed to:

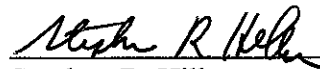
Dawn Kobus, Hearings Coordinator
Office of Financial and Insurance Regulation
Ottawa State Office Building, Third Floor
611 West Ottawa Street
Lansing, Michigan 48933

Please be advised that any statements made are voluntary and may be used in any proceeding that may be held. If a hearing is requested, Respondents have the right at its expense to legal representation at the hearing. A licensed attorney must represent Respondents that are corporations or limited liability companies.

The Commissioner retains the right to pursue further administrative action against the Respondents should the Commissioner determine that such action is necessary and appropriate in the public interest, for the protection of consumers, and consistent with the purposes fairly intended by the policy and provisions of the Act.

Any other communication regarding this Order should be addressed to the Office of Financial and Insurance Regulation, Attention: Tracy Janousek, P.O. Box 30220, Lansing, Michigan 48909, Telephone: (517) 373-7199.

**OFFICE OF FINANCIAL AND
INSURANCE REGULATION**



Stephen R. Hilker
Chief Deputy Commissioner